PROCEDURES FOR CASES ASSIGNED TO THE HONORABLE JAMES E. SHAPIRO

This information on the court's procedures is for guidance purposes only. The court always retains the right to alter or modify its procedures at any time.

1. **Relief from the Automatic Stay under § 362, Lien Avoidance under § 522(f), and Abandonment under § 554**

Request for relief from an automatic stay provided by the Code under § 362 shall be by motion, not by adversary proceeding. Bankruptcy Rule 4003(d) similarly provides for motion practice with respect to avoidance of a lien under § 522(f) of the Code.

For relief from stay motions, the trustee shall be named as an additional party in interest and the procedure is as follows:

a. Creditor files motion, notice of motion, and affidavit or certificate showing service by first class mail on the debtor, debtor's attorney, trustee, U. S. Trustee, and any other parties in interest (BR 4001(a); 9014; 7004(b)(9)). (For lien avoidance motions, the debtor shall file the papers showing service on the lienholder, who is the only other party in interest.)

b. Fifteen (15) days plus three (3) days for mailing should be allowed for the filing of objections and requests for hearing. If the request is urgent, the court should be contacted for a hearing date, and a notice of motion shall be served announcing the date of the hearing, instead of an opportunity for a hearing.

c. If a timely objection and request for hearing is filed, the specific reason(s) for the objection shall be stated therein. The court will then notify the parties of the hearing date.

d. If no objection is timely filed after eighteen (18) days, an affidavit of no objection together with a proposed order granting the request for relief shall be submitted to the court together with a self-addressed stamped envelope. A copy of the signed order shall only be mailed if such self-addressed stamped envelope has been provided to the court.

For abandonment motions, the same procedure as is set forth for relief from stay motions applies. However, in addition, notice must be sent to all creditors. B.R. 6007.

2. **Communications with the Court**

Ex parte communications with the judge are prohibited. For assistance with procedural matters, any of the following members of the judge's staff may be contacted:

Tina Fies, Judicial Assistant
Carol Duncan, Courtroom Deputy
Jennifer B. Herzog, Law Clerk

All communications should be limited to procedural matters. No legal advice shall be given.

Avoid sending letters to the court – especially letters dealing with on-going negotiations with opposing parties.

3. **Hearings Arising out of Adversaries**

Generally, the court will schedule a pretrial conference (either by telephone or in the courtroom). At the pretrial conference, all parties participating should be fully prepared to provide the court with an overview of the case. Where parties are represented by counsel, the parties can also appear at the pretrial conference; however, their appearances are not required. It is anticipated at this pretrial conference the court shall fix various deadlines, including deadlines for discovery, filing of pretrial motions, and either a final pretrial conference or a trial date. If the parties inform the court at the pretrial conference that they are engaged in settlement discussions, the court may not fix any deadlines but may instead adjourn the pretrial conference for further hearing.

4. **Scheduling of Motions**

Do not request a motion hearing date over the telephone. The motion should first be filed and the court will either schedule a hearing and send out a notice of such hearing or, in the alternative, contact the party filing the motion and provide such party with a hearing date and direct that such party send out notice of that hearing.

There may be instances when an emergency exists. On such rare occasions, the party requesting the hearing may seek an expedited hearing date upon the filing of an affidavit as to why such an emergency exists.

5. **Briefs**

Do not file a brief in court at the time of the hearing. If a brief is to be filed, it should either be attached to the motion or alternatively be filed at least five (5) business days prior to the hearing, with copies of such brief to be simultaneously served upon all interested parties.

6. **Telephonic Conferences**

Often the court shall schedule telephonic hearings, primarily for the convenience of the parties. However, when a party appears *pro se*, the court generally requires that the hearing be held in the courtroom. If a telephonic conference is scheduled, all parties must be available at the designated time. If, after a telephone conference has been scheduled a conflict arises, the party or parties with the conflict may request an adjournment by contacting a member of the Judge's staff. If such request for an adjournment is granted, the party requesting the adjournment has the responsibility of promptly notifying all interested parties, in writing, of the adjourned hearing date.

7. **Procedure on Facsimile Transmissions**

See Bankruptcy Local Rule 5005.2.

8. **Orders**

The provisions contained in an order following a hearing should match the ruling by the court. It is the court's policy to check each proposed order against its minutes, even if no objection has been filed by any party to the proposed order.

With respect to an order for relief from stay, if the motion for relief seeks a termination of the stay, the order should say the stay is "terminated," not "annulled." If the motion for relief from stay does not provide for abandonment, the order should not include abandonment. Similarly, when specific items are contained within a motion under a lien avoidance in a § 522(f) motion, these same items should be set forth in the proposed order.

9. **"After the Dust Has Settled"**

Often, after disputes have been resolved, loose ends remain, requiring the court to follow up on such unfinished matters. Complete any and all paperwork necessary promptly in order to enable the court to complete the case or proceeding.

10. **Attorneys Not Licensed to Practice in the Bankruptcy Court of the Eastern District of Wisconsin**

As a general policy, attorneys not licensed to practice in this bankruptcy court are permitted to appear at the initial hearing on a *pro hac vice* basis. However, if it appears that there will be further hearings in the case or proceeding, the attorney must be admitted to practice in the Eastern District of Wisconsin. This can be accomplished by contacting Kathy Maxwell, Office Manager, United States District Court for the Eastern District of Wisconsin (414/297-3297).

11. **Stipulation to Non-Dischargeability**

Occasionally, parties stipulate to a determination of a dispute as being non-dischargeable prior to the filing of an adversary proceeding. In such event, the court requires an adversary proceeding be filed, and includes payment of the adversary filing fee and a stipulation signed by the parties and their respective counsel.

12. **Chapter 13 Calendar**

This court schedules all hearings involving cases for which Chapter 13 Standing Trustee Mary B. Grossman is the standing trustee on Tuesday mornings at 9:00 A.M., except for Chapter 13 cases arising out of the Kenosha and Racine areas which are also assigned to Chapter 13 Standing Trustee Grossman. The Kenosha/Racine hearings are scheduled Friday mornings at 9:00 A.M. by telephone. If there is a delay with respect to the Kenosha/Racine hearings, it is due to a heavy case load or time consuming issues in other cases previously called. All parties involved in the Kenosha/Racine hearings should be available between the hours of 9:00 A.M. and 11:00 A.M. for the conference call which will be initiated by the court.

All cases for which Chapter 13 Trustee Thomas J. King is the standing trustee are scheduled for Tuesday afternoons at 1:30 P.M.

If it appears that these matters involve contested issues which cannot be resolved during the hearings, the court will adjourn these matters to a later date and schedule such matters for evidentiary hearings.

13. **Trials or Evidentiary Hearings**

The court requires all parties to exchange witness lists and mark and exchange proposed exhibits by a scheduled date prior to such trial or evidentiary hearing. Failure to do so generally will result in such witness not being permitted to testify or such exhibit not being received into evidence. There are exceptions to this rule, but such exceptions are extremely rare.

Effective December 1, 2002, in accordance with Federal Rule of Bankruptcy Procedure 9014(e), except for preliminary hearings, pretrial conferences, and status conferences, all other hearings will be evidentiary hearings, at which witnesses may testify.

14. **Actual Hearings or Opportunity for Hearings**

It is the court's prerogative to determine whether a particular hearing shall be held only upon objection of an interested party or whether such hearing will be held in court regardless of any objection. In some cases, however, actual hearings will be held, regardless of any objection, and include the following:

a. Fee requests in Chapter 11 cases.

b. Approval of reaffirmation agreements for a debtor not represented by counsel.

c. Approval of the final account of Chapter 7 trustee and reexamination of Chapter 7 administrative expenses. Upon request, the trustee may appear by telephone if there are no anticipated objections.

d. Request to pay filing fee in installments.

e. Sanctions for wrongful conduct.

f. Approval of compromises or proposed sales under § 363 which the court deems to be substantial.

g. Motion for default judgment in adversary proceedings.

15. **Voluntary Conversions and Dismissals**

The following chart serves as a guide to when orders are or are not required in connection with conversions and dismissals of cases.

Conversions:	7 to 11	Mot., not prev. conv., mand. order
	7 to 12	Mot., not prev. conv., mand. order
	7 to 13	Mot., not prev. conv., mand. order
	11 to 7	Mot., mand. order if qual.
	11 to 12	Mot., discr. order if qual.
	11 to 13	Mot., discr. order if qual.

	12 to 7 Debtor converts	
	12 to 11	NA, Mot., discr. order if qual.
	12 to 13	NA, mot., discr. order if qual.
	13 to 7 Debtor converts	
	13 to 11	Mot. before conf., discr. order
	13 to 12	Mot. before conf., discr. order
Dismissals:	7, 11	Mot., oppor. for hrng., discr. order
	12	Mot., not prev. conv., mand. order
	13	Mot., not prev. conv., mand. order

16. **First Day Orders**

The filing of a Chapter 11 case often involves a number of proposed orders arising out of motions which must be immediately addressed by the court. These include the following:

a. Appointment of counsel for debtor-in-possession;
b. Extension of time to file schedules;
c. Establishment of a shortened service list;
d. Use of cash collateral under § 363 and/or post-petition financing under § 364;
e. Payment of pre-petition wages and various other pre-petition claims of key creditors.

These motions require a careful balancing on the part of the court to enable the debtor-in-possession time to reorganize and fund its operations while at the same time recognizing the rights of the creditors to insure that they are not prejudiced by any court orders before such creditors have had an opportunity to be fully heard.

It is the court's policy to do only what is absolutely necessary when presented with these types of proposed orders and maintain the status quo pending a full and complete hearing at a subsequent date. Notice of these motions must be given by the debtor-in-possession – even if it is less than 24 hours – to the following parties: U.S. Trustee; taxing authorities; 20 largest unsecured creditors; and secured creditors with liens on any property affected by debtor-in-possession's motions. Such notice can be effected by facsimile transmissions and telephone calls. The debtor-in-possession must submit to the court an affidavit of how such notice was provided and in what manner. Some motions are routine – namely, the motion to extend time to file schedules and motion for the establishment of a shortened service list. Other motions, however, are more involved.

With respect to the motion for appointment of counsel for debtor-in-possession, in the larger cases, counsel for the debtor-in-possession often will conduct a conflict of interest search. While this is being done, matters arise which require immediate action on behalf of the debtor-in-possession. Milwaukee Engraving Company, Inc., 219 F.3d 635 (7th Cir. 2000), held that a law firm cannot

be paid fees for post-petition professional services when it was not acting under an order of appointment and its application for employment was eventually denied on grounds that the firm was not disinterested. In order to address this problem, the court will, under these circumstances, authorize the immediate interim appointment of such counsel for a limited period of time while the law firm's conflict search is being conducted. If it later turns out that there is a conflict of interest, the order of appointment will be terminated. However, under these circumstances the attorney acting on behalf of the debtor-in-possession is protected with respect to ability to request compensation for services performed up to the point of termination of its appointment.

Regarding payment of pre-petition wages and other pre-petition claims, the court will carefully scrutinize such requested payments. It will authorize the payment of the wages to employees where it is established that failure to do so will result in the employees immediately leaving their jobs. This will require testimony. The court will limit the amount to be paid to each employee to such amounts as they would be entitled to receive as priority claims under § 507(a)(3).

Regarding financing orders and approval of cash collateral agreements, Judge Eisenberg on his website has set forth a number of caveats which the court will generally not approve. This court follows that procedure and, generally, will not allow the following:

a. A secured creditor picking up a category of assets post-petition on which it did not have a pre-petition security interest unless new credit or funds are advanced;

b. Super-priority positions unless a significant carve-out is proposed;

c. A secured creditor obtaining a higher priority than Chapter 11 expenses of administration or Chapter 7 expenses of administration in the event of a conversion from Chapter 11;

d. Pre-petition or post-petition cross-collateralization unless new credit or funds are advanced;

e. Automatic perfection of security interests in "replacement lien collateral" without filing or refiling UCC statements; or

f. A secured creditor picking up a security interest in preference or fraudulent conveyance recoveries.

The court requires the taking of testimony on behalf of the debtor-in-possession with respect to the need for such financing orders and approval of cash collateral agreements.

17. **Withdrawal of Attorney for Debtor(s)**

When the court signs an order authorizing the attorney for the debtor(s) to withdraw and a hearing is forthcoming, the attorney who is withdrawing must send a letter to the debtor(s) informing the debtor(s) of the upcoming hearing and instructing the debtor(s) to contact the court and provide a telephone number (if the hearing is by telephone) or instructing the debtor(s) where to appear in person for the hearing. A copy of said letter to the debtor(s) must be filed with the court.

JES:tdf
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